

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



TH 12b

Addendum

June 9, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 12b**, Coastal Commission Permit Application
#A-6-CII-08-028 (Moss), for the Commission Meeting of June 12, 2008.

Staff recommends the following changes be made to the above-referenced staff report:

The attached appeal form shall be added as Exhibit #7 to the staff report.

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STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Ave.
La Jolla, Ca 92037

Phone Number: (858) 551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: The proposal includes the demolition of a 2,100 sq. ft. home and the subsequent construction of a 6,755 sq. ft. single-family residence including a 2,366 sq. ft. basement, an infinity edge swimming pool, spa and patio on a 13,650 sq. ft. blufftop lot
3. Development's location (street address, assessor's parcel no., cross street, etc.):
5015 Tierra Del Oro, Carlsbad, San Diego County
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-08-28

DATE FILED: 2/28/08

DISTRICT: San Diego

RECEIVED

FEB 28 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 7
APPLICATION NO. A-6-CII-08-028
Appeal Form
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California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other

Date of local government's decision: February 6, 2008

Local government's file number (if any): CDP 05-46

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Hoffman Planning and Engineering
3153 Lionshead Ave
Carlsbad, Ca 92010

—

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

—

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated, february 28, 2008

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Steve Kuer*
Appellant or Agent

Date: 2/28/08

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

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STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
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Attachment A

Moss Appeal – 5015 Tierra Del Oro, Carlsbad
February 28, 2008

The proposal includes the demolition of a 2,100 sq. ft. home and the subsequent construction of a 6,755 sq. ft. single-family residence including a 2,366 sq. ft. basement, an infinity edge swimming pool, spa and patio on a 13,650 sq. ft. lot. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The bottom of the bluff face is currently covered with a large riprap revetment that extends up to approximately +18-20 Mean Sea Level (MSL). The infinity pool, spa, and patios will extend further seaward of the home and will terrace the slope, beyond Commission staff's identified edge of bluff, terminating near the top of the riprap.

The City found that the subject single-family residence is consistent with the blufftop development provisions of the certified LCP. However, the development as approved by the City raises several LCP consistency issues with regard to stringline setbacks, blufftop setbacks, landform alteration, coastal bluff preservation and previously unpermitted development.

The certified LCP prohibits new development along the ocean from extending further seaward than a "stringline" drawn between adjacent developments. Specifically, Section 21.204.050B of the Coastal Shoreline Development Overlay states:

New development fronting the ocean shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south". A greater ocean setback may be required for geologic reasons and if specified in the Local Coastal Program.

The City found that the project is consistent with the stringline provisions of the LCP. However, as approved, the stringline is measured incorrectly (it is measured from the furthest portion of the adjacent residences when it should be measured from the nearest adjacent corner of the structures). Staff has historically interpreted stringline provisions to be measured in this manner, and has resulted in previous appeals within the City of Carlsbad, the most recent being the lot adjacent and north to the subject site (Riley) among others (ref. CDP Nos. A-6-CII-03-26/Kiko; 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips and 6-95-144/Bownes'; A-6-CII-07-017/Riley). The City's interpretation allows the structure to be sited between 1-10 feet seaward of the allowable stringline, inconsistent with the Overlay and resulting in new development being sited further seaward. Further, the stringline for all accessory structures has been utilized in the same

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manner, and given the location of the bluff edge, the interpretation of these stringlines would allow for significant development on the bluff face.

The certified Carlsbad Mello II LUP contains policies that address bluff preservation. Policy 4-1 provides:

(d) Undevelopable Shoreline Features

No development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities.

In addition, Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

a. Grading and Excavation – Grading and excavation shall be the minimum necessary to complete the proposed development consistent with the provisions of this zone and the following requirements:

2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

The Commission has interpreted the above section to mean that only at-grade accessory structures are permitted on a bluff face which do not require grading. The Commission has found that “the minimum necessary” for new development on the bluff face means at-grade and ephemeral structures that do not require excavation. The project is proposing permanent structures (retaining wall, pool, spa, patio, decking) seaward of the residence on the bluff face which will require excavation and, as such, appears to be inconsistent with the above provisions of the certified LCP. The geotechnical report cited for the project locates the bluff edge at approximately +20 MSL; however, the Commission’s staff geologist has sited the bluff edge at +30 MSL, similar to the location determined by staff for previously appealed the lot adjacent and north (ref. CDP A-6-CII-07-017/Riley). Further, in looking at previous shoreline photographs; it appears that the subject site has an unpermitted stairway built between 1972-1979. The City failed to address the permit history of this stairway in its review. A portion of the stairway would be removed and replaced with a pool, spa and decking. All of these improvements cannot be considered at-grade and would require significant grading, inconsistent with the above stated LCP policies.

The City, in its review, did not address the existing revetment. Section 21.204.110 4b of the Coastal Shoreline Development Overlay Zone states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public

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Moss Appeal
February 28, 2008
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beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

As noted, there is an existing riprap revetment located on the beach, seaward of the toe of the bluff. Commission staff have researched the subject site and determined that originally there was a small amount of riprap at this location prior to the Coastal Act, however; between 1979 and 1989 this revetment was significantly improved, without the benefit of a coastal development permit and thus is unpermitted. Both the geotechnical report and the City failed to address the authorization of this revetment. The geotechnical report also failed to identify the nature and purpose of the existing riprap on the beach or address the need for existing protection, the potential need for future protection and/or the associated impacts to public access.

(C:\Documents and Settings\tross\Desktop\TLR Reports\Appeal items\Moss_attachmentA.doc)

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(619) 767-2370



Th 12b

Filed: February 28, 2008
49th Day: Waived
Staff: Toni Ross-SD
Staff Report: May 23, 2008
Hearing Date: June 11-13, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved with Conditions

APPEAL NO.: A-6-CII-08-028

APPLICANT: Steve and Janet Moss

PROJECT DESCRIPTION: The demolition of a 2,100 sq. ft. home and construction of a 6,755 sq. ft. single-family residence including a 2,366 sq. ft. basement, an infinity edge swimming pool, spa and patio on a 13,650 sq. ft. blufftop lot.

PROJECT LOCATION: 5015 Tierra Del Oro, Carlsbad (San Diego County).

APPELLANTS: Commissioner Sara Wan, Commissioner Pat Kruer

STANDARD OF REVIEW: Certified City of Carlsbad Mello II Local Coastal Program and the public access policies of the Coastal Act.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

The primary issues raised by the development relate to the appropriate western or stringline setback for the residence as well as the accessory structures (i.e. pool, spa, patio, and staircase), geologic stability, and coastal bluff protection. Further concerns include an existing riprap revetment on the site that the City failed to address regarding its permit history, or the proper siting of the home without the need for the riprap, inconsistent with the City's LCP provisions. The City also failed to address the permit history for the existing stairway, the original pathway was present prior to the Coastal Act, however the path/stairway was improved sometime between 1972 and 1979.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Mello II LCP, City of Carlsbad Staff Report for CDP #05-46 dated January February 6, 2008, City of Carlsbad Resolution No. 6371, Geotechnical Report by Geotechnical Investigation dated April 20, 2007, Addendum to Geotechnical Report by Geotechnical Investigation dated July 2, 2008, Second Addendum to Geotechnical Report by Geotechnical Investigation dated October 9, 2007, Appeal forms.

I. Appellants Contend That: The appellants contend that the City's approval is inconsistent with Carlsbad LCP provisions pertaining to shoreline development, coastal bluff protection and ocean setback (stringline). Most prominent are concerns related to alteration of landforms and encroachment along the shoreline. Other concerns are the permit history for the riprap and for the stairway cascading down the bluff and terminating at the bottom of the riprap for private access to the ocean; both of these developments are currently existing onsite. The appellants contend that the development as approved by the City allows for encroachment of the proposed home further westward than the Commission's historic interpretation of the City's stringline provisions. The appellants contend that the bluff edge was sited incorrectly in the Geotechnical Report; this siting of the bluff edge allows for development on the face of the bluff, beyond that permissible by the City of Carlsbad's LCP. As approved, the pool, spa, stairway and various patios are located beyond staff's interpretation of the bluff edge.

II. Local Government Action: A coastal development permit was approved by the Planning Commission on February 6, 2008. The development was approved with numerous conditions including requirements for dedication of a 25' lateral beach access and erosion control measures for grading. A further condition of approval requires the applicants to wait until the owners of the neighboring lot (Riley residence) have been issued their building permit before the applicants for this development may receive their Coastal Development Permit. The City required this condition because the "stringlines" that were established for the proposed project are based on the configuration of the approved Riley Residence (A-6-CII-07-017), so the Riley residence must be constructed as currently approved in order for the stringline for this residence to be consistent with the Coastal Shoreline Development Overlay Zone. If the applicant chooses not to wait; the stringline will be measured from the lot north of the Riley's as currently no building exists on the Riley lot from which to establish a stringline measurement. (ref City Special Condition #X - Exhibit 4)

III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R.

§ 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must “notify the local government and the applicant that the effective date of the local government action has been suspended,” 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-CII-08-028 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-CII-08-028* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description/Permit History. The proposal includes the demolition of a 2,100 sq. ft. home and the subsequent construction of a 6,755 sq. ft. single-family residence including a 2,366 sq. ft. basement, an infinity edge swimming pool, spa and patio on a 13,650 sq. ft. lot. The project site is a coastal blufftop lot located on the west side of Tierra Del Oro, just north of Cannon Road in the City of Carlsbad. The site slopes down from Tierra Del Oro, transitioning into a steep coastal bluff. The bottom of the bluff face is currently covered with a large riprap revetment that extends up to approximately +18-20 Mean Sea Level (MSL). The infinity pool, spa, and patios will extend further seaward of the home and will terrace the slope, beyond Commission staff's identified edge of bluff, terminating near the top of the riprap.

The City granted a variance from the front yard setback requirements (20 feet required, 0-foot setback approved). The variance allows more of the flat upper portion of the site to be used for building rather than the steeper sloping portions of the lot which minimizes grading and landform alteration consistent with coastal resource preservation. The prevailing pattern of development along Tierra Del Oro uses this approach and the City and Commission have approved it in many permit decisions. Also proposed is a patio and upper deck/terrace seaward of the home and a stairway that leads down the slope and beyond the identified edge of the bluff, terminating at the top of the riprap.

The proposed development is located in an already developed single-family residential neighborhood. Most of the oceanfront residences have decks, patios and other structures which extend seaward of the principal residential structure. Many of the residences have walkways which extend to the bluff edge. Some residences have platforms at the bluff edge and private beach access stairways which extend down the bluff face to the beach. Residences on either side of the subject site have walkways that extend down the bluff face and lead to the beach.

The site is planned for residential development in the Mello II segment of the City's certified Land Use Plan (LUP). The site is located within and subject to the Coastal Resource Protection

Overlay zone and the Coastal Shoreline Development Overlay Zone of the Carlsbad Municipal Code. The Land Use designation on the site is Residential Low-Medium Density (RLM) and Open Space (OS). The OS General Plan designation applies to the bluff portion of the site.

The standard of review is consistency with the certified City of Carlsbad Local Coastal Program, Mello II segment and, because the site is between the sea and the first public road, the public access and recreation policies of the Coastal Act.

2. Shoreline Development/Hazards. The appellants contend that the City's approval of the proposed new single-family residence on the subject site is inconsistent with the City's certified LCP as it pertains to shoreline development/hazards. In particular, as noted above, there is an existing riprap revetment located at the toe of the bluff fronting the subject site and the City, in its review, failed to address the revetment. Section 21.204.110 4b of the Coastal Shoreline Development Overlay zone states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

A revetment at this location appears to have first been installed prior to passage of the Coastal Act, although aerial photography indicates that the riprap revetment was enlarged sometime between May of 1979 and June of 1987. The 1979 and 1987 photos were taken during the same season, thus there should not be a large scale difference in the depth of the beach based solely on natural processes. It is likely, therefore, that the revetment was enlarged as opposed to it simply being more visible due to lack of sand supply and thus a higher level of exposure. In 1978 seven properties to the north sought and received a permit from the Commission for improvements to the existing revetment in response to damaging storm waves (ref. CDP# F7529). The residents filed jointly for repair and upgrades to the existing revetment. The application was for lots 8 through 14, beginning directly south of the subject site and ending at the southern terminus of the Tierra Del Oro development. Based on the permit file, the subject site was not included within this application. As a condition of that permit, each applicant was required to dedicate the most seaward 25' of their property for public lateral access. To date, no such lateral access dedication has been recorded on the subject site, suggesting that the owner never sought and/or received a permit to improve the revetment because such a lateral access dedication would likely have been required as a condition of approval for any such permit.

The City's policy also requires that revetments, seawalls etc. be permissible only to protect existing structures. Because the enlargement of the revetment fronting the subject site has never been authorized pursuant to a coastal development permit, neither the City nor the Commission had been afforded the opportunity to determine the necessity of the current configuration of the revetment. The City in its review of the project failed to address the permit history for the revetment at this site, and also failed to address whether the revetment, as it is currently configured, was designed to eliminate or mitigate adverse impacts on local shoreline sand supply, again something required by the City's LCP. As such, the project as approved by the

City raises a substantial issue when addressing the existing revetment and the City's policies for permitting such development.

3. Stringline. The appellants contend that the project as approved by the City is also inconsistent with the City of Carlsbad's certified LCP regarding the interpretation of the western boundary of the home or the "stringline". The appellants contend that the stringline as interpreted by the City would allow for further cumulative westward encroachment towards the bluff within the Tierra Del Oro neighborhood. The certified LCP prohibits new development along the ocean from extending further seaward than a "stringline" drawn between adjacent developments. Specifically Section 21.204.050B of the Coastal Shoreline Development Zone states:

New development fronting the ocean shall observe at a minimum, an ocean setback based on "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south, no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structure to the north and south. A greater ocean setback may be required for geological reasons and if specified in the Local Coastal Program.

The project as approved by the City interprets the stringline to be drawn from the furthest point of development to the direct north and south. The City found that the project is consistent with the stringline provisions of the LCP. However, as approved, the stringline is measured incorrectly (it is measured from the furthest portion of the adjacent residences when it should be measured from the nearest adjacent corner of the structures). The Commission has for the most part historically interpreted the City's stringline provisions to be measured in this manner, and has resulted in previous appeals within the City of Carlsbad, the most recent being the lot adjacent and north to the subject site (Riley) among others (ref. CDP Nos. A-6-CII-03-26/Kiko; 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips and 6-95-144/Bownes'; A-6-CII-07-017/Riley). In this particular case, the City's interpretation allows the development to encroach between 1-10 feet seaward of the allowable stringline, inconsistent with the Overlay. Further, the stringline for all accessory structures has been utilized in the same manner, and given the location of the bluff edge, the interpretation of these stringlines would allow for significant development on the bluff face.

Furthermore, the City allowed the stringline to be drawn from the approved stringline established by Coastal Permit a-6-CII-07-017. To date, this permit has not been reviewed by the City nor issued by the Coastal Commission. The City's LCP requires that the stringline be measured from the nearest "structure" rather than allowing such measurement from a proposed or even an approved structure. The concern raised by the City's approach is that if the building permits are issued but the residence is never constructed, the stringline will have been determined by a structure that will never exist. Furthermore, when addressing the accessory structure stringlines (patio, deck, etc.), again the City drew the stringline from the adjacent approved, but not built structures. The project, as approved by the City, therefore raises a substantial issue for stringline interpretation.

4. Development of the Bluff Face. The appellants contend that the project as approved by the City is inconsistent with the City of Carlsbad's certified LCP regarding development on the bluff face. Specifically the appellants contend that the City has approved permanent structures on the bluff face, thus allowing for grading and development on the actual bluff face. Substantial grading and development on a coastal bluff face is not permitted by the City's LCP provisions. Furthermore, development on a coastal bluff is restricted to public accessways and limited public recreational facilities. The development approved within the bluff face on this site cannot be considered for use as a public accessway or for limited public recreational facilities.

Section 21.204.050 of the Coastal Shoreline Development Overlay Zone and policies of the Mello II LCP state:

Mello II LUP Policy 4-1(d):

No development shall be permitted on sand or rock beach or on the face of any ocean bluff, with the exception of access ways to provide **public** (emphasis added) beach access and of limited public recreational facilities.

Section 21.204.050 of the Coastal Shoreline Development Overlay Zone provides:

- a. Grading and Excavation - Grading and excavation **shall be the minimum necessary** (emphasis added) to complete the proposed development consistent with the provisions of this zone and the following requirements:
 - 2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

In its approval of the project, the City cited the project's conformance with the bluff-top development provisions of the Coastal Shoreline Development Overlay. The overlay is intended to provide land use regulations along the Carlsbad shoreline including beaches, bluffs and the land area immediately landward thereof. The purpose of the overlay zone is to ensure that the public's interest in maintaining the shoreline as a unique recreational and scenic resource is adequately protected. Additionally, the overlay ensures public safety and public access will be available and promotes avoidance of the adverse geologic and economic effects of bluff erosion.

The Commission has interpreted the above section to mean that only at-grade accessory structures are permitted on a bluff face which do not require grading. The Commission has found that "the minimum necessary" for new development on the bluff face means at-grade and ephemeral structures that do not require excavation. The project is proposing permanent structures (retaining wall, pool, spa, patio, decking) seaward of the residence on the bluff face which will require excavation and, as such, is inconsistent with the above provisions of the certified LCP. The geotechnical report cited for the project locates the bluff edge at approximately +20 MSL; which is generally located at the top of the riprap revetment. However, the Commission's staff geologist has determined the bluff edge to be at +36 MSL,

similar to the location determined by staff for previously appealed projects adjacent to and/or nearby the subject site (ref. CDP A-6-CII-07-017/Riley; A-6-CII-08-018/Byrne).

In 2007, the City of Carlsbad approved a CDP for the last vacant lot on Tierra Del Oro (ref. CDP A-6-CII-07-017/Riley) right next door to the subject site. Because of the conditions on this lot, the Commission's Technical Services staff reviewed in depth the geotechnical information submitted associated with this CDP. Previous to this review, the bluff edge was loosely defined at approximately +20' MSL (generally at the top of the revetment). However, after more careful review of submitted geotechnical reports, the Commission's staff geologist for the above cited project in 2007 determined the bluff edge was more accurately defined and located at approximately + 36' MSL. The Commission appealed the project (ref. A-6-CII-07-017/Riley) and required the project to be modified to remove all development located west of the 36' contour (i.e., remove all permanent improvements from the face of the coastal bluff). This is the second CDP issued by the City since that determination. The Commission's staff geologist has reviewed the geotechnical report, and again determined that the bluff edge is located at approximately +36' MSL, identical to the bluff edge determined for appeal #A-6-CII-07-017/Riley.

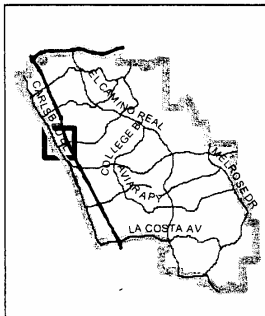
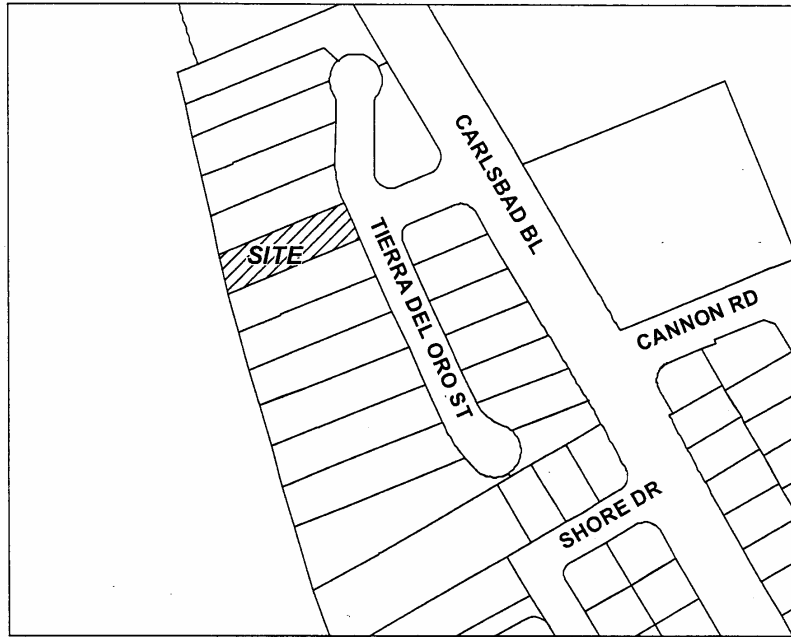
The Commission recognizes that development on the bluff face exists at several other locations on Tierra Del Oro (ref. Exhibit #6). However, most of these projects occurred before the Commission had a geologist on staff to advise on the location of the bluff edge; now that the bluff edge has been defined at approximately +36' MSL and given the City's LCP provisions restricting development on the face of the bluff to only public accessways (private accessways are not permitted), these types of projects located beyond the established bluff edge (36' contour) can no longer be found consistent with the City of Carlsbad's certified LCP.

In looking at historical aerial photography at this location, the site appears to have had an improved pathway that existed prior to the ratification of the Coastal Act; however, sometime between 1972-1979, the pathway was improved by the construction of a stairway with guard railing. The City failed to address the permit history of this stairway in its review. A portion of the stairway would be removed and replaced with a pool, spa and decking. However, a portion of this stairway would remain, unpermitted and the City failed to address this issue.

Further, it is unclear what has been permitted in the backyard area at this location, in that some of the improvements may have been completed without the benefit of a Coastal Development Permit. Furthermore, the City of Carlsbad has policies that restrict development on a coastal bluff to public accessways and public recreational facilities that are at grade. The proposal, as approved by the City, represents a private accessway, patio, infinity edge pool and spa all on the face of the coastal bluff. All of these improvements cannot be considered at-grade and would require significant grading, inconsistent with the above stated LCP policies. The project therefore raises substantial issue when addressing existing development on the bluff face and future protection of coastal bluffs.

In conclusion, the project raises four major concerns relative to LCP consistency. These concerns include interpretation of stringline policies resulting in seaward encroachment of development, development on a coastal bluff, the history and configuration of the existing riprap revetment and the permit history of the improved private accessway. The City failed to

address the permit history for either the stairway or the accessway. As such, these developments can be considered existing unpermitted development. Furthermore, the project as approved by the City allows for extensive development and grading on a coastal bluff, a coastal resource expressly protected by the City's certified LCP. The project therefore raises substantial issue for the issues discussed above




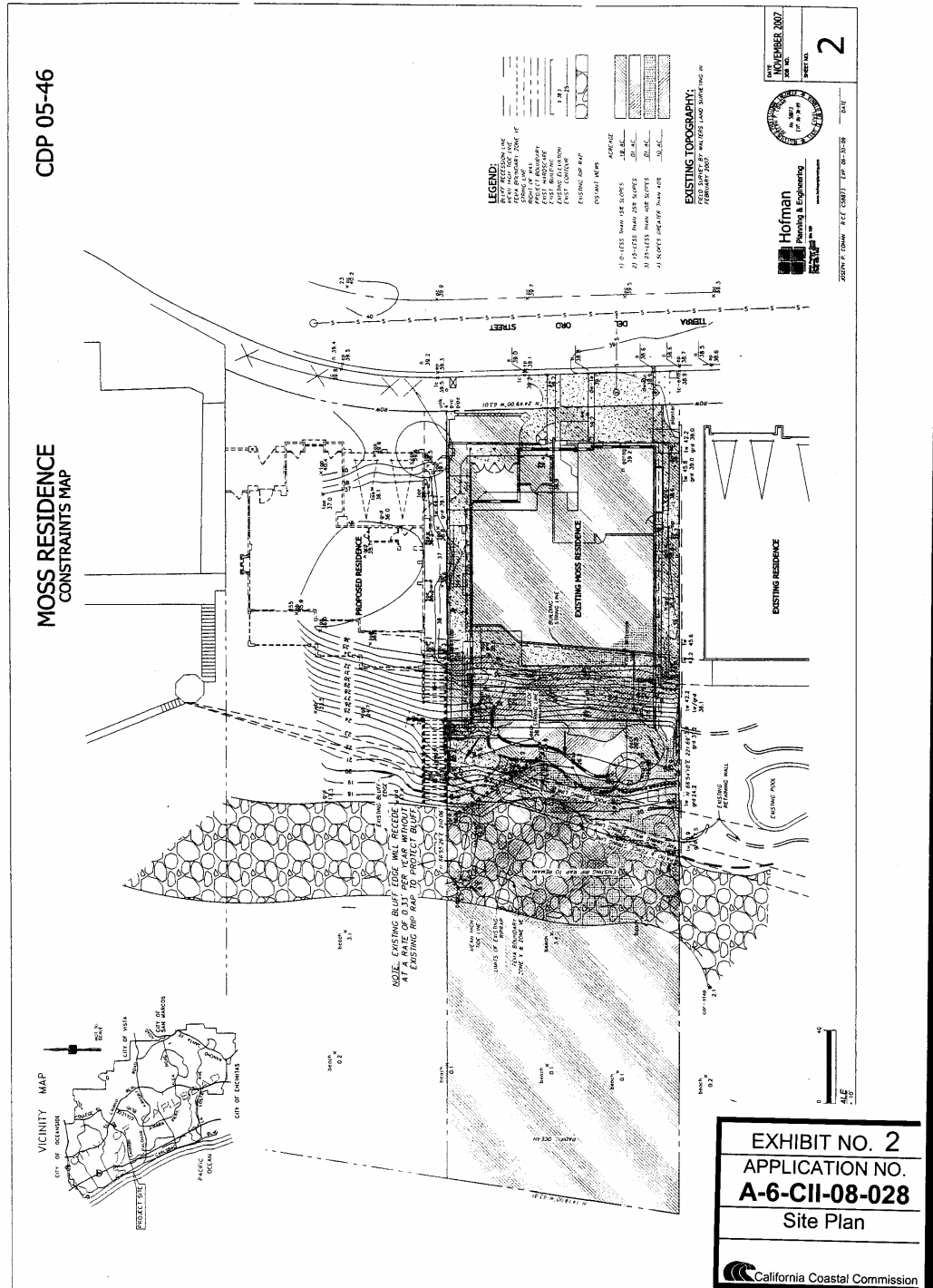
SITE MAP



NOT TO SCALE

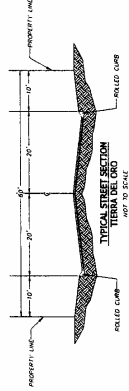
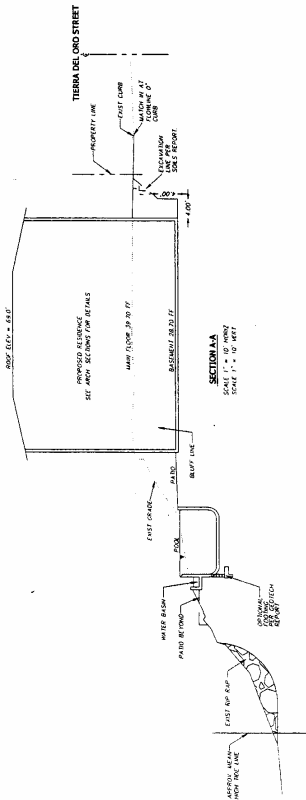
Moss Residence
CDP 05-46

EXHIBIT NO. 1
APPLICATION NO.
A-6-CII-08-028
Location Map
 California Coastal Commission



CDP 05-46

MOSS RESIDENCE
CROSS SECTIONS



NOTE SEE SHEET 3 FOR
SECTION LOCATIONS

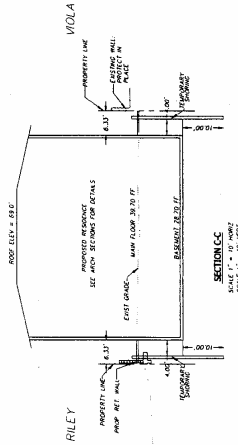
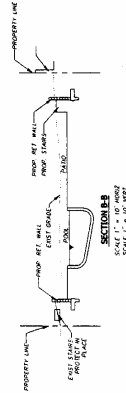


EXHIBIT NO. 3
APPLICATION NO.
A-6-CII-08-028
Cross-Sections
California Coastal Commission

Hofman
Planning & Engineering
2000 P. CHAN E.C. (CHS) TSP 06-30-06
DATE
NOVEMBER 2007
SHEET NO.
4

RECEIVED

MAR 13 2008

PLANNING COMMISSION RESOLUTION NO. 6371 CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT CDP 05-46 TO ALLOW FOR THE DEMOLITION OF AN EXISTING 2,100 SQUARE FOOT SINGLE-FAMILY RESIDENCE AND THE CONSTRUCTION OF A NEW 6,755 SQUARE FOOT SINGLE-FAMILY RESIDENCE, SWIMMING POOL AND SPA ON PROPERTY LOCATED AT 5015 TIERRA DEL ORO STREET, WITHIN THE MELLO II SEGMENT OF THE LOCAL COASTAL PROGRAM AND LOCAL FACILITIES MANAGEMENT ZONE 3.

CASE NAME: MOSS RESIDENCE

CASE NO.: CDP 05-46

WHEREAS, **Steve Moss**, "Developer," has filed a verified application with the City of Carlsbad regarding property owned by **Steven H. Moss and Janet E. Moss**, "Owners," described as

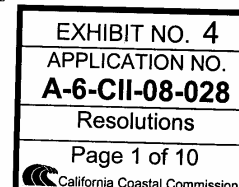
Lot 15, in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 3052, filed in the Office of the County Recorder of San Diego County, February 4, 1954

("the Property"); and

WHEREAS, said verified application constitutes a request for a Coastal Development Permit as shown on Exhibits "A" - "J" dated **February 6, 2008**, on file in the Planning Department, **MOSS RESIDENCE - CDP 05-46**, as provided by Chapter 21.201.040 of the Carlsbad Municipal Code; and

WHEREAS, the Planning Commission did, on **February 6, 2008**, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission relating to the CDP.



1 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning
2 Commission of the City of Carlsbad as follows:

- 3 A) That the foregoing recitations are true and correct.
4
5 B) That based on the evidence presented at the public hearing, the Commission
6 APPROVES MOSS RESIDENCE – CDP 05-46 based on the following
7 findings and subject to the following conditions:

8 Findings:

- 9 1. That the proposed development is in conformance with the Certified Local Coastal
10 Program and all applicable policies in that the project consists of demolition of an
11 existing single-family residence and construction of a new 6,755 square foot single-
12 family residence, swimming pool and spa on a lot designated for residential
13 development; no agricultural activities, sensitive resources, geological instability,
14 flood hazard, or coastal access opportunities exist onsite, and the development does
15 not obstruct views of the coastline as seen from public lands or public right-of-way
16 or otherwise damage the visual beauty of the coastal zone.
17
18 2. The proposal is in conformity with the public access and recreation policies of Chapter 3
19 of the Coastal Act in that adequate vertical public access exists within approximately
20 2,000 feet to the north and south of the property, the subject property was not
21 identified as a potential lot for future additional public access to the shoreline in the
22 Local Coastal Program. However, the project is conditioned to dedicate a lateral
23 public access easement with a minimum width of 25 feet of dry sandy beach at all
24 times of the year to the California Coastal Commission or their designee as agreed
25 to with the California Coastal Commission.
26
27 3. The project is consistent with the provisions of the Coastal Resource Protection Overlay
28 Zone (Chapter 21.203 of the Zoning Ordinance) in that the project will adhere to the
City's Master Drainage Plan, Grading Ordinance, Storm Water Ordinance,
Standard Urban Storm Water Mitigation Plan (SUSMP), and Jurisdictional Urban
Runoff Management Program (JURMP) to avoid increased urban runoff,
pollutants, and soil erosion. While steep slopes are located on the western half of the
property, none of the slopes meet the criteria necessary to restrict development, i.e.,
the 40% slope areas proposed for development have elevation differentials less than
15 ft., consists of an area less than 10,000 sq. ft. in size, are not comprised of any
prominent land form features, and are not considered "dual criteria" slopes.
Furthermore, no evidence of landslide or slope instability is identified on the site,
nor is it located in an area susceptible to accelerated erosion, floods, or liquefaction.
4. The project is consistent with the provisions of the Coastal Shoreline Development
Overlay Zone (Chapter 21.204 of the Zoning Ordinance) in that vertical access exists
within approximately 2,000 feet to the north and south of the project. The site is
currently developed with an existing single-family home, and has not historically
been used for vertical access. No vertical access is warranted based upon the

ordinance criteria. However, the project is conditioned to dedicate a lateral public access easement with a minimum width of 25 feet of dry sandy beach at all times of the year to the California Coastal Commission or their designee as agreed to with the California Coastal Commission. A geotechnical analysis of the project site was prepared, which identified the location of the bluff face between elevations 15 and 20 feet MSL. The analysis concluded that the proposed development will have no adverse affects on the stability of the coastal slope, and based on the current shore protection measures and estimated recession rate, it was concluded that the proposed pool and residence will be protected throughout the life span (75 years) of the project. The project has been conditioned to restrict any new development from encroaching further seaward then the 20 foot elevation contour line in order to insure that no excavation, grading, or deposit of natural materials is placed on the beach or the bluff face. The proposed residential structure has been designed with attractive architectural features, which are compatible with the surrounding development and the natural environment. The proposed buildings, structures, and landscaping have been located so as to preserve to a degree feasible, ocean views as may be visible from the nearest public street. The proposed landscape has been designed to use an efficient irrigation system and eliminate dry weather flow. The project adheres to all coastal "stringline" setback requirements for the placement of new structures and balconies.

5. That the Planning Director has determined that the project belongs to a class of projects that the State Secretary for Resources has found do not have a significant impact on the environment, and it is therefore categorically exempt from the requirement for the preparation of environmental documents pursuant to Section 15303(a) (**construction of a single-family residence in an urbanized area**) of the state CEQA Guidelines. In making this determination, the Planning Director has found that the exceptions listed in Section 15300.2 of the state CEQA Guidelines do not apply to this project.
6. The project is not located in the Coastal Agricultural Overlay Zone, according to Map X of the Land Use Plan, certified September 1990 and, therefore, is not subject to the provisions of the Coastal Agriculture Overlay Zone (Chapter 21.202 of the Zoning Ordinance).
7. The project is consistent with the Citywide Facilities and Improvements Plan, the Local Facilities Management Plan for Zone 3, and all City public facility policies and ordinances. The project includes elements or has been conditioned to construct or provide funding to ensure that all facilities and improvements regarding sewer collection and treatment; water; drainage; circulation; fire; schools; parks and other recreational facilities; libraries; government administrative facilities; and open space, related to the project will be installed to serve new development prior to or concurrent with need.
8. The Planning Commission has reviewed each of the exactions imposed on the Developer contained in this resolution, and hereby finds, in this case, that the exactions are imposed to mitigate impacts caused by or reasonably related to this project, and the extent and the degree of exaction is in rough proportionality to the impact caused by the project.

Conditions:

Note: Unless otherwise specified herein, all conditions shall be satisfied prior to **issuance of a grading permit or building permit, whichever occurs first.**

1. If any of the following conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted; deny or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the City's approval of this **Coastal Development Permit**.
2. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the **Coastal Development Permit** documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development, different from this approval, shall require an amendment to this approval.
3. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.
4. If any condition for construction of any public improvements or facilities, or the payment of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid, this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.
5. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this **Coastal Development Permit**, (b) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. This obligation survives until all legal proceedings have been concluded and continues even if the City's approval is not validated.
6. Developer shall submit to **the Planning Director** a reproducible 24" x 36" mylar copy of the **Site Plan** reflecting the conditions approved by the final decision-making body.

- 1 7. Developer shall include, as part of the plans submitted for any permit plancheck, a
2 reduced legible version of all approving resolution(s) in a 24" x 36" blue-line drawing
3 format (including any applicable Coastal Commission approvals).
- 4 8. Prior to the issuance of a building permit, the Developer shall provide proof to the
5 Director from the **Carlsbad Unified** School District that this project has satisfied its
6 obligation to provide school facilities.
- 7 9. This project shall comply with all conditions and mitigation measures which are required
8 as part of the Zone 3 Local Facilities Management Plan and any amendments made to that
9 Plan prior to the issuance of building permits.
- 10 10. Building permits will not be issued for this project unless the local agency providing
11 water and sewer services to the project provides written certification to the City that
12 adequate water service and sewer facilities, respectively, are available to the project at the
13 time of the application for the building permit, and that water and sewer capacity and
14 facilities will continue to be available until the time of occupancy.
- 15 11. This approval is subject to all conditions of AV 07-03 as approved by the Planning
16 Director on January 4, 2008.
- 17 12. The applicant shall apply for and be issued building permits for this project within two
18 (2) years of approval or this coastal development permit will expire unless extended per
19 Section 21.201.210 of the Zoning Ordinance.
- 20 13. Prior to the issuance of building permits, the applicant shall apply for and obtain a
21 grading permit issued by the City Engineer.
- 22 14. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy
23 #17, the License Tax on new construction imposed by Carlsbad Municipal Code Section
24 5.09.030, and CFD #1 special tax (if applicable), subject to any credits authorized by
25 Carlsbad Municipal Code Section 5.09.040. Developer shall also pay any applicable
26 Local Facilities Management Plan fee for Zone 3, pursuant to Chapter 21.90. All such
27 taxes/fees shall be paid at issuance of building permit. If the taxes/fees are not paid, this
28 approval will not be consistent with the General Plan and shall become void.
15. Developer shall submit to the City a Notice of Restriction executed by the owner of the
real property to be developed. Said notice is to be filed in the office of the County
Recorder, subject to the satisfaction of the Planning Director, notifying all interested
parties and successors in interest that the City of Carlsbad has issued a **Coastal
Development Permit** by Resolution No. 6371 on the property. Said Notice of
Restriction shall note the property description, location of the file containing complete
project details and all conditions of approval as well as any conditions or restrictions
specified for inclusion in the Notice of Restriction. The Planning Director has the
authority to execute and record an amendment to the notice which modifies or terminates
said notice upon a showing of good cause by the Developer or successor in interest.

16. Developer shall submit and obtain Planning Director approval of a Final Landscape and Irrigation Plan showing conformance with the approved Preliminary Landscape Plan and the City's Landscape Manual. Developer shall construct and install all landscaping as shown on the approved Final Plans, and maintain all landscaping in a healthy and thriving condition, free from weeds, trash, and debris.
17. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the landscape plancheck process on file in the Planning Department and accompanied by the project's building, improvement, and grading plans.
18. Pursuant to Carlsbad Municipal Code Section 21.203.040 (Coastal Resource Protection Overlay Zone), detached residential homes, when located within two hundred feet of an Environmentally Sensitive Area, coastal bluffs or rocky intertidal areas, shall be required to use efficient irrigation systems and landscape designs or other methods to minimize or eliminate dry weather flow. The Final Landscape and Irrigation Plans shall address these requirements as approved by the City of Carlsbad Planning Director.
19. The Final Landscape Plans shall show all slope areas planted in accordance with the slope re-vegetation requirements as outlined in the City of Carlsbad Landscape Manual.
20. The project site is located in an area that may contain soil material that is suitable for beach sand replenishment as defined in the Carlsbad Opportunistic Beach Fill program (COBFP) adopted by the Planning Commission on May 17, 2006 (SUP 04-13). Prior to the issuance of a grading permit, and as a part of the grading plan preparation, the developer shall test the soil material to be exported from the project site to determine the materials suitability for sand replenishment pursuant to the requirements of the COBFP. If the material is deemed suitable for beach replenishment the developer is encouraged to comply with the process outlined in the COBFP to transport and place the beach quality material on the beach site identified in the COBFP.
21. Prior to issuance of a building permit, the developer shall record a deed restriction/waiver of public liability in compliance with the requirements of Municipal Code Section 21.204.120 (Coastal Shoreline Development Overlay Zone).
22. Prior to the issuance of a building permit, the owner shall comply with the Coastal Shoreline Development Overlay Zone (Chapter 21.204 of the Zoning Ordinance), and dedicate a lateral public access easement with a minimum width of twenty-five feet of dry sandy beach at all times of the year to the California Coastal Commission or their designee as agreed to with the California Coastal Commission.
23. To avoid impact to the bluff face, no new development, grading, excavation, or deposit of natural materials shall occur further seaward of elevation 20 foot MSL.
24. The "stringlines" that were established for the proposed project are based on the approved Riley Residence (CDP 06-05, Planning Commission Resolution No. 6231) project located on the adjacent vacant parcel to the north. To be consistent with the

1 Coastal Shoreline Development Overlay Zone, building permits for the proposed
2 project shall not be issued until the building permits have been issued for the
3 construction of the Riley Residence. Alternatively, the building shall be modified to
4 conform to the existing stringline conditions as measured from the northwest corner
5 of the Viola residence (5019 Tierra Del Oro Street) to the northwest corner of the
6 Constantino residence (5009 Tierra Del Oro Street). Such modifications shall be
shown on the building plans and subject to the approval of the Planning Director
prior to issuance of a building permit.

25. If building permits for the new home have not been issued within two years of the
demolition of the existing residence, at issuance of building permits; or prior to the
approval of a final map and/or issuance of certificate of compliance for the conversion of
existing apartments to air-space condominiums, the Developer shall pay to the City an
inclusionary housing impact fee as an individual fee on a per market rate dwelling unit
basis in the amount in effect at the time, as established by City Council Resolution from
time to time.

Engineering:

General

26. Prior to hauling dirt or construction materials to or from any proposed construction site
within this project, Developer shall apply for and obtain approval from, the City Engineer
for the proposed haul route.
27. Developer shall include rain gutters on the building plans subject to the City Engineer's
review and approval. Developer shall install rain gutters in accordance with said plans.
**Rain gutters are required to transport roof drainage to Tierra Del Oro to the
maximum extent possible.**

Fees/Agreements

28. Developer shall cause property owner to execute and submit to the City Engineer for
recordation, the City's standard form Geologic Failure Hold Harmless Agreement.
29. Developer shall cause property owner to execute and submit to the City Engineer for
recordation the City's standard form Drainage Hold Harmless Agreement regarding
drainage across the adjacent property.
30. Prior to approval of any grading or building permits for this project, Developer shall
cause Owner to give written consent to the City Engineer for the annexation of the area
shown within the boundaries of the **site plan** into the existing City of Carlsbad Street
Lighting and Landscaping District No. 1 and/or to the formation or annexation into an
additional Street Lighting and Landscaping District. Said written consent shall be on a
form provided by the City Engineer.

Grading

31. Based upon a review of the proposed grading and the grading quantities shown on the **site map**, a grading permit for this project is required. Developer shall apply for and obtain a grading permit from the City Engineer prior to issuance of a building permit.
32. **Prior to issuance of a building permit, Developer shall submit shoring plan details and associated excavation design calculations referred to in the report prepared by Geotechnical Exploration, Inc. addendum, dated October 9, 2007, Job No. 07-9342. Said shoring details shall be reviewed by a structural engineer qualified for such review and prepared to the satisfaction of the Building Department.**
33. Upon completion of grading, Developer shall file an "as-graded" geologic plan with the City Engineer. The plan shall clearly show all the geology as exposed by the grading operation, all geologic corrective measures as actually constructed and must be based on a contour map which represents both the pre and post site grading. The plan shall be signed by both the soils engineer and the engineering geologist, and shall be submitted on a 24" x 36" mylar or similar drafting film format suitable for a permanent record.
34. Developer shall comply with the City's requirements of the National Pollutant Discharge Elimination System (NPDES) permit and the City's Standard Urban Storm Water Mitigation Plan (SUSMP). Developer shall provide improvements constructed pursuant to best management practices as referenced in the "California Storm Water Best Management Practices Handbook" to reduce surface pollutants to an acceptable level prior to discharge to sensitive areas. Plans for such improvements shall be submitted to and subject to the approval of the City Engineer. Said plans shall include but not be limited to notifying prospective owners and tenants of the following:
 - a. All owners and tenants shall coordinate efforts to establish or work with established disposal programs to remove and properly dispose of toxic and hazardous waste products.
 - b. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, and other such fluids shall not be discharged into any street, public or private, or into storm drain or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County and City requirements as prescribed in their respective containers.
 - c. Best Management Practices shall be used to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements.
35. Developer shall cause property owner to process, execute and submit an executed copy to the City Engineer for recordation a City standard Permanent Stormwater Quality Best Management Practice Maintenance Agreement for the perpetual maintenance of all treatment control, applicable site design and source control, post-construction permanent Best Management Practices prior to the issuance of a grading permit or building permit, whichever occurs first for this Project.

36. Prior to the issuance of grading permit or building permit, whichever occurs first, Developer shall submit for City approval a "Storm Water Management Plan (SWMP)." The SWMP shall demonstrate compliance with the City of Carlsbad Standard Urban Stormwater Mitigation Plan (SUSMP), Order R9-2007-0001 issued by the San Diego Region of the California Regional Water Quality Control Board and City of Carlsbad Municipal Code. The SWMP shall address measures to avoid contact or filter said pollutants from storm water, to the maximum extent practicable, for the post-construction stage of the project. At a minimum, the SWMP shall:

- a. Identify existing and post-development on-site pollutants-of-concern.
- b. Identify the hydrologic unit this project contributes to and impaired water bodies that could be impacted by this project.
- c. Recommend source controls and treatment controls that will be implemented with this project to avoid contact or filter said pollutants from storm water to the maximum extent practicable before discharging offsite;
- d. Establish specific procedures for handling spills and routine cleanup. Special considerations and effort shall be applied to (RESIDENT/EMPLOYEE) education on the proper procedures for handling cleanup and disposal of pollutants.
- e. Ensure long-term maintenance of all post-construction BMPs in perpetuity.
- f. Identify how post-construction runoff rates and velocities from the site will not exceed the pre-construction runoff rates and velocities to the maximum extent practicable.

Dedication/Improvements

37. Prior to occupancy, the developer shall repair or reconstruct existing public improvements along the public street abutting the project site damaged by construction as identified by the City Engineer. All work performed shall be in conformance with City of Carlsbad Standards. A right of way permit is required for any work performed in the public right of way.

Utilities

38. Prior to issuance of building permits, Developer shall pay all fees, deposits, and charges for connection to public facilities.

Code Reminders:

The project is subject to all applicable provisions of local ordinances, including but not limited to the following code requirements:

39. Developer shall pay a landscape plancheck and inspection fee as required by Section 20.08.050 of the Carlsbad Municipal Code.
40. Approval of this request shall not excuse compliance with all applicable sections of the Zoning Ordinance and all other applicable City ordinances in effect at time of building permit issuance, except as otherwise specifically provided herein.

- 1 41. Premise identification (addresses) shall be provided consistent with Carlsbad Municipal
2 Code Section 18.04.320.

3 **NOTICE**

4 Please take **NOTICE** that approval of your project includes the "imposition" of fees, dedications,
5 reservations, or other exactions hereafter collectively referred to for convenience as
6 "fees/exactions."

7 You have 90 days from date of final approval to protest imposition of these fees/exactions. If
8 you protest them, you must follow the protest procedure set forth in Government Code Section
9 66020(a), and file the protest and any other required information with the City Manager for
10 processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely
11 follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or
12 annul their imposition.

13 You are hereby FURTHER NOTIFIED that your right to protest the specified fees/exactions
14 DOES NOT APPLY to water and sewer connection fees and capacity charges, nor planning,
15 zoning, grading, or other similar application processing or service fees in connection with this
16 project; NOR DOES IT APPLY to any fees/exactions of which you have previously been given a
17 NOTICE similar to this, or as to which the statute of limitations has previously otherwise
18 expired.

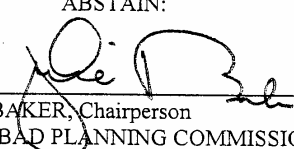
19 PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning
20 Commission of the City of Carlsbad, California, held on **February 6, 2008**, by the following
21 vote, to wit:

22 AYES: Chairperson Baker, Commissioners Boddy, Cardosa, Dominguez,
23 Douglas, Montgomery, and Whitton

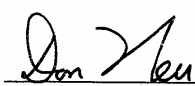
24 NOES:

25 ABSENT:

26 ABSTAIN:

27 
28 JULIE BAKER, Chairperson
CARLSBAD PLANNING COMMISSION

ATTEST:

29 
30 DON NEU
31 Planning Director
32 PC RESO NO 6371

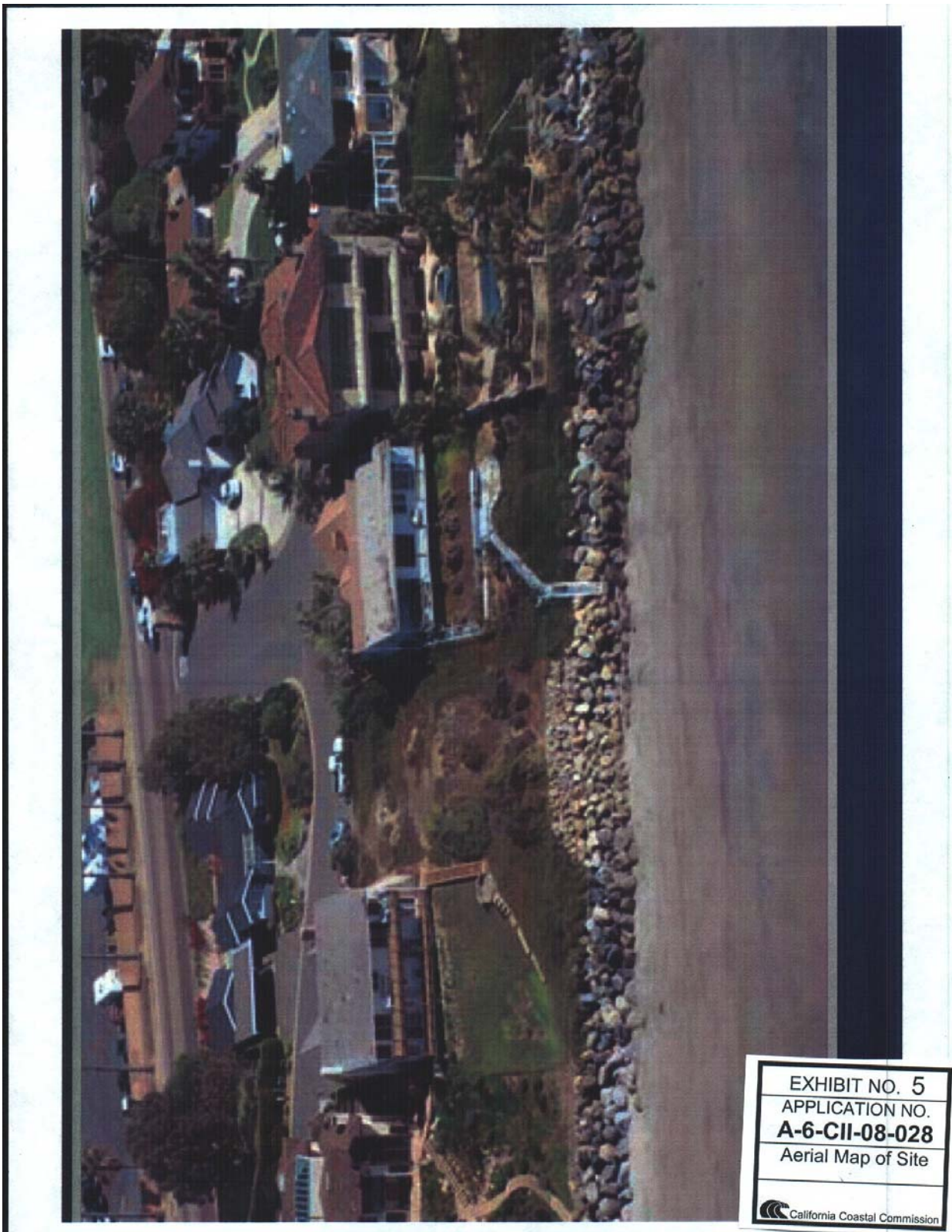


EXHIBIT NO. 5
APPLICATION NO.
A-6-CII-08-028
Aerial Map of Site

 California Coastal Commission

CITY PERMITS ISSUED: **YELLOW DOTTED LINE**
CCC PERMITS ISSUED: **RED DOTTED LINE**
POTENTIAL VIOLATIONS: **GREEN ARROWS**
UNKNOWN: **NO INDICATOR**
PRE-COASTAL: **BLUE ARROW**

